

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

**JOINT REPLY COMMENTS OF
DOCOMO PACIFIC, INC., PR WIRELESS, INC.,
AND CHOICE COMMUNICATIONS, LLC.**

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SUMMARY

Docomo Pacific, Inc. (“DPAC”), PR Wireless, Inc. (“PR Wireless”), and Choice Communications, LLC (“Choice”) (collectively, the “Insular Wireless Carriers”) urge the FCC to take into account the unique challenges that exist in the Insular Areas in implementing universal service reform. DPAC provides wireless service in Guam and the Commonwealth of the Northern Mariana Islands (“CNMI”), PR Wireless, Inc. provides wireless service in Puerto Rico, and Choice Communications provides wireless service in the U.S. Virgin Islands (“USVI”).

As a threshold matter, it is important for the Commission to define the term “insular areas”. The Telecommunications Act of 1996 specifically provides that consumers in “insular ... areas” should have access to telecommunications and information services reasonably comparable to those available in urban areas, but the statute itself does not define the term “insular areas.” In a 1999 universal service fund rulemaking proceeding, the FCC tentatively concluded that Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands “are properly included in the definition of insular areas” – but the FCC never took any final action on its proposed definition. The Insular Wireless Carriers support the FCC’s proposed definition, which is consistent with the definition of insular areas set forth in other statutes and by the Department of Interior’s Office of Insular Affairs (“OIA”).

The FCC must take into account the unique challenges that exist in the Insular Areas in implementing universal service reform. The Insular Areas face depressed economic conditions, as well as forbidding terrain and sometimes volatile climatic conditions and geologic events, which combine to make the deployment of mobile broadband networks more challenging than in the United States mainland. These factors warrant universal service reforms that include policies

and support mechanisms tailored to effectively address the unique needs and circumstances of the Insular Areas.

Congress and the FCC have long recognized the special needs of insular areas. As discussed above, the Telecommunications Act of 1996 specifically identifies “insular areas” with regard to universal service funding, providing that consumers in “insular . . . areas” should have access to telecommunications and information services reasonably comparable to those available in urban areas. Recognizing the special needs of insular areas, Congress has explicitly provided special treatment to insular areas for services other than telecommunications. OIA was established for the very purpose of recognizing and supporting the unique needs of insular areas. Accordingly, there is precedent at the federal level – within Congress and the executive branch – for policies that recognize and take into account the uniquely challenging circumstances present in insular areas.

The Insular Wireless Carriers reiterate in these Reply Comments that the Commission should take actions to ensure that sufficient, explicit support is available to facilitate the deployment and operation of advanced mobile broadband networks in the Insular Areas. The recommendations of the Insular Wireless Carriers include:

- Establishing a set-aside for Connect America Fund (“CAF”) funding, as well as significant bidding credits in the reverse auction mechanism, for carriers serving the Insular Areas in the first phase of CAF;
- Providing for a transition from current high-cost funding to the new CAF support mechanisms that takes into account the unique circumstances and needs of the Insular Areas; and
- Enabling carriers serving the Insular Areas to receive ongoing funding based on a forward-looking economic cost model in the second phase of CAF, or, alternatively, establishing a set aside and significant bidding credits, for carriers serving the Insular Areas, as part of a reverse auction mechanism.

Finally, the Insular Wireless Carriers submit that GCI's Alaska-specific universal service reform proposal would not be appropriate for the Insular Areas. The Insular Wireless Carriers submit that GCI's plan is very specific to Alaska, and that the special circumstances that exist in Alaska are very different from the special circumstances that exist in the Insular Areas.

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AND CHOICE COMMUNICATIONS, LLC.**

Docomo Pacific, Inc. (“DPAC”), PR Wireless, Inc. (“PR Wireless”), and Choice Communications, LLC (“Choice”) (collectively, the “Insular Wireless Carriers”), by counsel, hereby submit these Reply Comments, pursuant to the Commission’s Further Inquiry in the above-captioned proceeding.¹ DPAC provides wireless service in Guam and the Commonwealth of the

¹ *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Proceeding*, DA 11-1348 (rel. Aug. 3, 2011) (“*Further Inquiry*”); *See, Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-

Northern Mariana Islands (“CNMI”), PR Wireless, Inc. provides wireless service in Puerto Rico, and Choice Communications provides wireless service in the U.S. Virgin Islands (“USVI”).

Each of the Insular Wireless Carriers has been designated as a competitive eligible telecommunications carrier (“CETC”) for its respective service area.

The Insular Wireless Carriers specifically provide comment on the Commission’s request for further comments regarding universal service reform as it relates to Guam, CNMI, Puerto Rico, the USVI, and other insular areas (collectively, the “Insular Areas”).

I. DEFINITION OF “INSULAR AREA”

As a threshold matter, the Insular Wireless Carriers submit that it is important for the Commission to define the term “insular areas” in order to provide clarity and certainty to the affected consumers and carriers. The Telecommunications Act of 1996 specifically provides that consumers in “insular . . . areas” should have access to telecommunications and information services reasonably comparable to those available in urban areas,² but the statute itself does not define the term “insular areas.”

The FCC sought to define the term in a universal service fund rulemaking proceeding initiated in 1999, tentatively concluding that Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands “are properly included in the

109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, 2011 WL 466775 (rel. Feb. 9, 2011) (“CAF NPRM”).

² 47 U.S.C. § 254(b)(3) (providing that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”).

definition of insular areas”³ The FCC never took any final action on its proposed definition.⁴ Nonetheless, the *USF Deployment Notice* provides important guidance regarding how “insular areas” should be defined for purposes of the FCC’s universal service programs.

The FCC cited three factors that led to its proposed definition. First, federal statutes generally define “insular areas” as “the island portions of the United States that are not states or portions of states.”⁵ Second, insular areas should be limited to islands because, “in common usage, the term insular area means ‘of, or having the form of an island.’”⁶ Third, the proposed definition is consistent with the manner in which the Department of Interior’s Office of Insular Affairs treats “insular areas.”⁷

³ *Federal-State Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177 at paras. 136 – 138 (1999) (“*USF Deployment Notice*” or “*Notice*”).

⁴ *But see* Section 2.105 of the FCC’s Rules, 47 C.F.R. § 2.105 notes 2 and 3 (United States Table of Frequency Allocations) (indicating that the Caribbean insular areas are Puerto Rico, the USVI, and Navassa Island, and that the Pacific insular areas are American Samoa, Guam, the CNMI, Baker Island, Howland Island, Jarvis Island, Kingman Reef, Palmyra Island, Wake Island, Johnston Atoll, and Midway Atoll).

⁵ *Id.* (footnote omitted). *See, e.g.*, 48 U.S.C. § 1492(a)(1) (Energy Resources of Caribbean and Pacific Insular Areas) (indicating that the Caribbean and Pacific insular areas are comprised of “Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau”).

⁶ *Id.* (footnote omitted).

⁷ *Id.* The Office of Insular Affairs provides the following definition of “insular areas”:

A jurisdiction that is neither a part of one of the several States nor a Federal district. This is the current generic term to refer to any commonwealth, freely associated state, possession or territory or Territory and from July 18, 1947, until October 1, 1994, the Trust Territory of the Pacific Islands. Unmodified, it may refer not only to a jurisdiction which is under United States sovereignty but also to one which is not, *i.e.*, a freely associated state or, 1947-94, the Trust Territory of the Pacific Islands or one of the districts of the Trust Territory of the Pacific Islands.

Office of Insular Affairs, accessed at http://www.doi.gov/oia/Islandpages/political_types.htm.

Although Congress did not specifically define the term “insular areas” in the Telecommunications Act of 1934, several other statutes provide a definition of the term “insular areas” – and these statutory definitions are consistent with the definition proposed by the Commission in the *USF Deployment Notice*.⁸ For example, 7 U.S.C. § 3103, governing a program for disadvantaged farmers administered by the Department of Agriculture, defines “insular areas” as “the Commonwealth of Puerto Rico; Guam; American Samoa; the Commonwealth of the Northern Mariana Islands; the Federated States of Micronesia; the Republic of the Marshall Islands; the Republic of Palau; and the Virgin Islands of the United States.”⁹ Likewise, 48 U.S.C. § 1492 (congressional declaration of energy policy with respect to insular areas) defines “insular areas” as Puerto Rico, the USVI, Guam, American Samoa, the Marshall Islands, CNMI, and the Trust Territory of the Pacific Islands.¹⁰

II. THE UNIQUE CHALLENGES THAT EXIST IN INSULAR AREAS MUST BE TAKEN INTO ACCOUNT IN THE COMMISSION’S UNIVERSAL SERVICE REFORMS

The Insular Areas face depressed economic conditions, as well as forbidding terrain and sometimes volatile climatic conditions and geologic events, which combine to make the deployment of mobile broadband networks more challenging than in the United States mainland. These factors warrant universal service reforms that include policies and support mechanisms tailored to effectively address the unique needs and circumstances of the Insular Areas. The Insular Wireless Carriers strongly support the comments filed by PTI Pacifica Inc. (IT&E), which rec-

⁸ The Commission cited several of these statutes in its *USF Deployment Notice* at para. 137, n. 254.

⁹ See 7 CFR § 755.2. See also 7 CFR § 3430.2, General Awards Provision, Department of Agriculture (same definition) and 7 CFR § 3431.3, Veterinarian shortage, Department of Agriculture (same definition).

¹⁰ Similarly, 40 CFR § 33.103 (Environmental Protection Agency, disadvantage businesses) defines “insular areas” as Puerto Rico or any territory or possession of the United States.

ommended that “as the Commission undertakes comprehensive USF reforms and transitions to the CAF, it needs to ensure that its reforms do not undermine service in insular areas ... because these areas present unique challenges to communications service providers.”¹¹

A. Precedent for the Special Treatment of Insular Areas

Congress and the FCC have long recognized the special needs of insular areas. As discussed above, the Telecommunications Act of 1996 specifically identifies “insular areas” with regard to universal service funding, providing that consumers in “insular . . . areas” should have access to telecommunications and information services reasonably comparable to those available in urban areas.¹² Likewise, the Commission has recognized the special needs of insular areas for the provision of telecommunications services to rural health care providers. In its *Rural Health Care Order on Reconsideration*, the Commission amended its rules to provide discounted advanced telecommunications services to support health care providers in states that are “entirely rural”.¹³ In so doing, the Commission asserted that:

This support is necessary to address the unique circumstances faced by health care providers and telecommunications carriers serving American Samoa and other similarly situated geographic areas. Geographic isolation ... can be mitigated by the availability and use of modern technology.¹⁴ *** We have long recognized that Congressional goals for this program were unfulfilled in American Samoa and other entirely rural states.¹⁵ *** Congress specifically directed the Commission to consider rural health care providers in insular areas when developing mechanisms for access to telecommunications and infor-

¹¹ IT&E Comments, filed Aug. 24, 2011, at 2.

¹² 47 U.S.C. § 254(b)(3)

¹³ Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Rural Health Care Support Mechanism*, WC Docket No. 02-60, 19 FCC Rcd. 24613, paras. 38 – 42, adopted Dec. 15, 2004 (“*Rural Health Care Order on Reconsideration*”)

¹⁴ *Id.* at para. 40.

¹⁵ *Id.* at para. 42. Under the FCC’s definitions, the term “State” includes the territories and possessions. 47 U.S.C. § 153(40). All of the areas identified by USAC as “entirely rural” are in the insular areas. *Id.* at para. 42, n. 158. USAC identifies American Samoa, the USVI, CNMI and Guam as entirely rural. *Id.* at para. 38, n. 143.

mation services. Congressional intent also supports the adoption of special mechanisms by which to calculate support for insular areas.¹⁶

Congress has provided special treatment to insular areas for services other than telecommunications. For example, in appropriating funds for agricultural cooperative extension work, Congress provided that no allotment would be made to a state unless that state provided an equal amount of matching funds.¹⁷ However, Congress specifically provided an exception for insular areas, providing in relevant part that “in lieu of the matching funds requirement of paragraph (1), the insular areas of the Commonwealth of Puerto Rico, Guam, and the Virgin Islands of the United States shall provide matching funds from non-Federal sources in an amount equal to 50% of the [Federal] funds”¹⁸ Further, Congress provided that the matching fund requirement may be waived if the Agriculture Secretary “determines that the government of the insular area will be unlikely to meet the matching fund requirement for the fiscal year.”¹⁹ No waiver provision is provided for the fifty states.²⁰

Finally, the Office of Insular Affairs (“OIA”) in the Department of the Interior was established for the very purpose of recognizing and supporting the unique needs of insular areas. By letter dated July 19, 2005, OIA filed comments with the Treasury Department regarding proposed regulations to implement the American Jobs Creation Act of 2004.²¹ In relevant part, that letter stated as follows:

¹⁶ *Id.* at para. 42.

¹⁷ 7 U.S.C.A. § 343(e)(1).

¹⁸ 7 U.S.C.A. § 343(e)(4)(A).

¹⁹ 7 U.S.C.A. § 343(e)(4)(B).

²⁰ 7 U.S.C.A. § 343(e)(1).

²¹ Public Comment Letter from Deputy Assistant Secretary David B. Cohen, Department of the Interior, filed July 19, 2005 with the Internal Revenue Service, 2005 WL 5770593 (I.R.S.).

The Department of the Interior’s extensive efforts to assist the Insular Areas are rooted in an understanding of the unique challenges that the Insular Areas face. Each has very limited land and resources. Each has a small population, and a limited pool of expertise to address the community’s critical needs. Each is located in an area that is highly prone to destructive typhoons, cyclones and hurricanes. *** Because of the remoteness and resource poverty of each Insular Area, each faces high transport costs to import the basic necessities of the population.²²

Because of the special fiscal and economic challenges faced by the Insular Areas, it has been the policy of successive administrations from both parties to support tax and trade provisions to help the Insular Areas generate sufficient tax revenue and economic activity to meet the most basic needs of their people. *** Special tax provisions for the Insular Areas, in particular, manifest an important underlying principle of U.S. territorial policy: The Federal Government does not treat the Insular Areas as sources of revenue.²³

Accordingly, there is precedent at the federal level – within Congress and the executive branch – for policies that recognize and take into account the uniquely challenging circumstances present in insular areas.

B. The Commission Should Ensure That Sufficient and Explicit Ongoing Universal Service Support Is Available for Carriers Serving Insular Areas.

The Insular Wireless Carriers reiterate in these Reply Comments that the Commission should take actions to ensure that sufficient, explicit support is available to facilitate the deployment and operation of advanced mobile broadband networks in the Insular Areas. The recommendations of the Insular Wireless Carriers include:

- Establishing a set-aside for Connect America Fund (“CAF”) funding, as well as significant bidding credits in the reverse auction mechanism, for carriers serving the Insular Areas in the first phase of CAF;
- Providing for a transition from current high-cost funding to the new CAF support mechanisms that takes into account the unique circumstances and needs of the Insular Areas; and

²² *Id.* at 1.

²³ *Id.* at 2.

- Enabling carriers serving the Insular Areas to receive ongoing funding based on a forward-looking economic cost model in the second phase of CAF, or, alternatively, establishing a set aside and significant bidding credits, for carriers serving the Insular Areas, as part of a reverse auction mechanism.

1. The Commission Should Set Aside Funding and Establish Significant Bidding Credits in the First Phase of the Connect America Fund for Carriers Serving Insular Areas.

The Insular Wireless Carriers again urge the Commission to set aside funding in the first phase of CAF specifically for use in accelerating broadband deployment in unserved areas in the Insular Areas. The challenges of geography, topographic and climatic factors, and economic conditions set the Insular Areas apart from the U.S. mainland in important respects. These challenges make it extremely difficult, if not impossible, for the private sector to solve the problem of deployment broadband throughout the Insular Areas.

A second reason for the establishment of a set aside for insular areas is that, in the absence of dedicated funding, a reverse auction mechanism (depending upon how it ultimately is structured by the Commission) may make it difficult for any CAF support to find its way to the Insular Areas during the first phase of CAF implementation. The costs involved in deploying broadband networks in the Insular Areas are excessive, in comparison to costs that are prevalent in most rural and high-cost areas on the U.S. mainland. As a result, if carriers seeking to serve the Insular Areas participate in reverse auctions in which other participants are vying for funding in order to deploy broadband on the mainland, it would be difficult for such carriers to “win” because their costs would prevent them from underbidding carriers that serve the mainland.

2. The Transition to the Connect America Fund Should Account for the Special Circumstances of Carriers Serving Insular Areas.

The Insular Wireless Carriers fully support IT&E's recommendation, and reiterate the recommendation in their initial Comments, that competitive ETCs serving the Insular Areas should be exempt from the Commission's proposal to phase-down CETC high-cost funding by 20% per year over a five-year period.²⁴ In addition, the Commission should exempt Insular Areas from its prior decision to cap CETC support at the level of support that CETCs were eligible to receive in each state and territory during March 2008 ("Interim Cap").²⁵ The Interim Cap has harmed, and continues to harm, consumers in the Insular Areas by unduly interfering with the ability of wireless CETCs to deploy infrastructure and deliver voice and broadband service. Accordingly, the Insular Wireless Carriers propose that the Commission provide an exemption for wireless carriers serving insular areas, so that high-cost support can be restored to levels that recognize the high cost of constructing, maintaining, and operating networks in insular areas.

3. The Commission Should Provide an Exception to Its "Competitive Bidding Everywhere" Approach in the Second Phase of the Connect America Fund To Ensure Sufficient Ongoing Support for Insular Areas.

The Commission should not apply a single-winner reverse auction mechanism to any service area in the Insular Areas, but instead should permit any eligible carrier "to provide both voice and broadband to customers in the area for a specific amount of ongoing support."²⁶ Eligibility would be based in part on each carrier's "commit[ment] to deploy[] a network capable of delivering both broadband and voice services throughout its service area, consistent with the

²⁴ IT&E Comments at 2.

²⁵ See *High Cost Universal Support, Federal-State Joint Board on Universal Service*, WC Docket 05-337, CC Docket 95-46, 20 FCC Rcd 8834, ¶ 1(2008) ("*Interim Cap Order*").

²⁶ *CAF NPRM* at para. 431.

coverage requirements and other public interest obligations of CAF fund recipients”²⁷ The level of each eligible carrier’s support would be determined through the use of a cost model, as proposed by the Commission in the *Notice*.

C. GCI’s Proposal for Alaska Should Not be Applied to the Insular Areas

In its *Further Inquiry*, the Commission asks for comment on whether GCI’s Alaska-specific universal service reform proposal would also be appropriate for the Insular Areas, and “whether, in the alternative, other modifications are warranted to the national policy to better reflect operating conditions in these areas.”²⁸ The Insular Wireless Carriers agree with the comments filed by GTA Telecom, LLC (“GTA”) emphasizing that the “special circumstances” that exist in Alaska are very different from the special circumstances that exist in Guam,²⁹ or any of the other Insular Areas.

GCI’s plan is very specific to Alaska. The Insular Areas are quite different. For example, GCI proposes to freeze high-cost support in Alaska for both ILECs and CETCs at 2011 levels and to establish a statewide cap.³⁰ However, as noted above, CETC support in the Insular Areas, which is subject to the Interim Cap (which does not apply to CETCs in Alaska), is already capped at inadequate March 2008 levels. For this and other reasons, the per capita level of CETC support in each of the insular areas is much lower than the level of such support for Alaska – despite the difficult circumstances in both Alaska and the Insular Areas.³¹ Further, a

²⁷ *Id.*

²⁸ *Further Inquiry* at 9.

²⁹ GTA Comments, filed Aug. 24, 2011, at 2.

³⁰ General Communication, Inc. (“GCI”) Ex Parte Letter to FCC in this proceeding, dated August 1, 2011, at 2.

³¹ Alaska receives approximately \$102 in annual per capita CETC support. By contrast, the Insular Areas receive the following levels of annual per capita CETC support: USVI -- \$14; CNMI -- \$18; Puerto Rico

freeze on ILEC and CETC support would not be competitively neutral, given that the number of wireless customers continues to grow while the number of wireline customers is shrinking. For all of these reasons, it makes no sense to freeze or to cap high-cost support for the Insular Areas.³² In their initial Comments and in these Reply Comments, the Insular Wireless Carriers have explained in detail the “other modifications [that] are warranted to the national policy to better reflect operating conditions in these areas.”³³

-- \$37; American Samoa -- \$48; and Guam -- \$50. These calculations were made using USAC data for CETC support (statewide cap for the Insular Areas) and 2010 U.S. Census data for the population of each state or Insular Area.

³² See GTA Comments at 2 – 3.

³³ *Further Inquiry* at 9.

III. CONCLUSION.

The Commission should adopt universal service reforms that include policies and support mechanisms tailored to effectively address the unique needs and challenging circumstances of the Insular Areas.

Respectfully submitted,

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